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No. 94-478

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CRESCENCIA B. TORTUYA,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY

and

MINNESOTA MUTUAL LIFE INSURANCE COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF IN OPPOSITION OF RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY

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BRIEF IN OPPOSITION OF RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Ninth Circuit United States Court of Appeals' judgment in this case. A copy of that decision, which has not been published, is included in Petitioner's Brief at Appendix "B".

STATEMENT OF THE CASE

Petitioner Crescencia Tortuya commenced this action against MetLife to recover $300,000 in accidental death benefits on account of the death of her husband Gene Tortuya, a participant in the United Airlines, Inc.

("UAL") Employee Welfare Benefit Plan ("Plan"), which is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* MetLife issued its group insurance policy no. 27747-G ("Policy") to UAL to provide certain accidental death and dismemberment benefits to eligible Plan participants.

It is undisputed that on June 19, 1989 Mr. Tortuya committed suicide by shooting himself in the head with a rifle. MetLife, the claim fiduciary for the Plan, determined that Mr. Tortuya's death was not an accident and that therefore no accidental death benefits were payable. Moreover, MetLife determined that Mr. Tortuya's death resulted from suicide or intentionally self-inflicted injury, perils which are expressly excluded from coverage under the terms of the Plan and Policy, and that therefore no accidental death benefits were payable.

Determining that MetLife's claim decision was reviewable under an abuse of discretion standard, the U.S. District Court for the Northern District of California held that, based on the clear terms of the Plan and Policy and the undisputed facts of Mr. Tortuya's suicide, MetLife's denial of Petitioner's claim was not an abuse of discretion, and granted summary judgment in its favor. (*See* copy of District Court's unpublished decision at Appendix "A" of Petitioner's Brief.) The Ninth Circuit affirmed, holding that MetLife's claim decision was both reasonable and based on substantial evidence.

Both the District Court and Ninth Circuit rejected Petitioner's argument that the alleged medical malpractice[1] of Mr. Tortuya's psychiatrists was the "efficient

[1] A U.S. district court has recently ruled that there had been no medical malpractice by Mr. Tortuya's treating psychiatrists. *See Crescencia B. Tortuya and Cristeta Tortuya v. United States of America,* U.S. Dist. Ct., N.D. Cal., No. C91-0338 BAC (September 13, 1994). A copy of this decision is found in Appendix "A" of Respondent Minnesota Mutual Life Insurance Company's Brief In Opposition.

proximate cause" of his death by suicide, and that therefore his death was accidental and benefits should be payable despite the Policy's suicide exclusion. Noting that ERISA insurance policies are governed by uniform federal common law, and that state law theories of contract interpretation, such as "efficient proximate cause," are preempted by ERISA, both the Ninth Circuit and District Court declined to apply such a state law theory to this case.

REASONS WHY THE PETITION SHOULD BE DENIED

I. PETITIONER HAS FAILED TO SHOW A RULE 10 BASIS FOR REVIEW BY THIS COURT

Petitioner has failed to present "special or important" reasons why this Court should grant discretionary review on a writ of certiorari under Rule 10. This is simply a case where the trial and appellate courts upheld the reasonable determination of the claim fiduciary which applied the clear and unambiguous terms of an ERISA plan insurance policy to the undisputed facts of the claim. Furthermore, there is no challenge by Petitioner to the propriety of the Ninth Circuit's application of the abuse of discretion standard of review to this case.

Contrary to Petitioner's assertions, the holding of the Ninth Circuit in this case comports with the decisions of this Court that state contract law theories are pre-empted by ERISA and that uniform principles of federal common law govern ERISA plan insurance benefits. Finally, Petitioner has not shown any conflict among the rulings of the federal courts of appeal on the questions she raises. Therefore, this Court should not grant the writ of certiorari.

II. THE NINTH CIRCUIT CORRECTLY HELD THAT CALIFORNIA STATE LAW OF CONTRACT INTERPRETATION WAS PREEMPTED BY ERISA

In its decision, the Ninth Circuit proceeded from the basic premise that "ERISA preempts state law with respect to claims for [ERISA plan] insurance benefits." (Appendix "B", p. B-5, Petitioner's Brief.) *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 57 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 62 (1987). State laws of contract interpretation (such as the "efficient proximate cause" analysis Petitioner contends should have been applied in this case) are not laws which "regulate insurance" so as to be saved from preemption under ERISA's "saving" clause, § 514(b)(2)(A), 29 U.S.C. §§ 1144(b)(2)(A). *See Pilot Life*, 481 U.S. at 50-51; *Serrato v. John Hancock Life Ins. Co.*, 31 F.3d 882, 885-887 (9th Cir. 1994); *Kanne v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489, 494 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989).

The distinction between insured and self-insured plans which this Court made in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990) in analyzing ERISA "deemer" clause, § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B), does not control the outcome of the case at bar. Rather, the controlling laws in this case are this Court's holdings in *Pilot Life* and *Metropolitan Life*, which were left undisturbed by *FMC*.

The leading case cited by Petitioner employing the "efficient proximate cause" theory is *Garvey v. State Farm Fire & Cas. Co.*, 48 Cal. 3d 395 (1989). *Garvey* involved a multiple-caused property loss under a homeowner's property policy. *Garvey* represents nothing more than the application of state law contract interpretation principles to a property insurance coverage problem. The "efficient proximate cause" theory is therefore not a law "regulating insurance" under the "business of insurance" analysis of *Pilot Life*, 481 U.S. at 48-51. A state-law theory of contract interpretation simply cannot be equated

with the mandatory benefits statute in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985), or the anti-subrogation statute in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), both of which were held to be saved from preemption. Rather, "efficient proximate cause" is analogous to the California "vesting of benefits" rule in *Serrato v. John Hancock Life Ins. Co.*, 31 F.3d 882 (9th Cir. 1994), the California law of insurance policy interpretation in *Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437 (9th Cir. 1990), and the California common law of contract interpretation in *Kanne v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489 (9th Cir. 1988), *cert. denied*, 492 U.S. 906 (1989), all of which were held not to be saved from preemption.

Furthermore, application of peculiar state law theories of contract construction to a case involving ERISA plan benefits runs counter to Congress's express goal of developing the "uniformity of decision which . . . will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws" by means of "a body of Federal substantive law [to] be developed by the Courts . . . ." *Pilot Life*, 481 U.S. at 56, *quoting* H.R. Rep. No. 93-533, p. 12 (1973) and 120 Cong. Rec. 29942 (remarks of Sen. Javits). Because its use conflicts with the structure and purpose of ERISA, the California common law theory of "efficient proximate cause" is preempted through implied preemption. *See FMC Corp. v. Holliday*, 498 U.S. 52, 57 (1990). Thus, the Ninth Circuit was correct and in accord with the decisions of this Court in declining to apply the state law "efficient proximate cause" analysis to the facts of the instant case.

III. THE NINTH CIRCUIT CORRECTLY INTERPRETED THE PLAN AND POLICY PROVISIONS

The Ninth Circuit properly interpreted the benefit provisions of the ERISA Plan and Policy in this case under the principles of uniform federal common law. *See Firestone Rubber & Tire Co. v. Bruch*, 489 U.S. 101, 110

(1989); *Pilot Life*, 481 U.S. at 56. Federal common law requires Courts to interpret the terms of an ERISA plan insurance policy according to their plain meaning. *See, e.g., Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437, 1441 (9th Cir. 1990) (ERISA insurance policy terms are to be interpreted in an ordinary and popular sense as would a [person] of average intelligence and experience"); *Wickman v. Northwestern Nat'l Ins. Co.*, 908 F.2d 1077, 1084 (1st Cir.), *cert. denied*, 111 S .Ct. 581 (1990) (policy terms "must be given their plain meanings, meanings which comport with the interpretations given by the average person").

The Ninth Circuit noted that the MetLife policy stated clearly and unambiguously that "*in no case shall any payment be made for death . . . which is caused by*: (A) intentionally self-inflicted injury, suicide . . ., while sane or insane" (emphasis in original). It is equally undisputed that Mr. Tortuya committed suicide by purposefully placing a loaded rifle in his mouth and firing it. Both the death certificate and the police report termed the death a suicide. Therefore, the Ninth Circuit correctly upheld MetLife's reasonable determination that no accidental death benefits were payable.

Furthermore, the Ninth Circuit correctly upheld MetLife's denial of benefits because the term "accident" in its ordinary usage was reasonably interpreted as not encompassing Mr. Tortuya's intentional act of suicide.

IV. THE NINTH CIRCUIT CORRECTLY DECLINED TO INCORPORATE STATE LAW THEORIES OF CONTRACT INTERPRETATION INTO FEDERAL COMMON LAW

Given the clear terms of the Policy and the undisputed facts of Mr. Tortuya's death, the Ninth Circuit had no need to incorporate California state law theories of contract interpretation into federal common law. While federal courts may create a substantive federal common law

of ERISA as they see fit, the fashioning of such law should proceed cautiously. *See Provident Life & Accid. Ins. Co. v. Waller*, 906 F.2d 985, 992 (4th Cir. 1990); *Nachwalter v. Christie*, 805 F.2d 956, 959 (11th Cir. 1986).

The Ninth Circuit correctly declined to incorporate "efficient proximate cause" analysis into federal common law because, among other reasons, the analysis had not been used in other ERISA accidental death benefits cases. Also, the Ninth Circuit found that the analysis was inapplicable since the alleged medical malpractice was not the event that set other events in motion. The court stated: "[The alleged medical malpractice] certainly did not make decedent suicidal; indeed, he sought medical help because he was suicidal. At worst, the alleged medical malpractice failed to interrupt the chain of events; this, however, does not constitute efficient proximate cause." [2] (Appendix "B," p. B-4, Petitioner's Brief.)

The fact that a U.S. district court has found that there was no medical malpractice on the part of Mr. Tortuya's attending psychiatrists (*see* Appendix "A" of Respondent Minnesota Mutual's Brief In Opposition) removes any factual basis for application of an "efficient proximate cause" analysis to this case. Since Petitioner's arguments for review by this Court rest on the already shaky premise that medical malpractice was the "accidental" cause of Mr. Tortuya's death, her arguments now entirely collapse.

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[2] It might be added that, contrary to Petitioner's assertions, medical malpractice is not *per se* a "covered peril" under the terms of the Plan and Policy. Generally, the consequences of medical malpractice are not considered "accidental" injuries. *See Senkier v. Hartford Life & Accident Ins. Co.*, 948 F.2d 1050 (7th Cir. 1991). In the case at bar, in particular, the alleged negligent acts of Mr. Tortuya's treating psychiatrists in not hospitalizing him and in changing his medication could not be considered "accidental" events.

V. THE FIFTH CIRCUIT'S HOLDING IN *MOORE* IS IN HARMONY WITH THE NINTH CIRCUIT'S HOLDING IN THIS CASE; THEREFORE, NO CONFLICT AMONG CIRCUITS EXISTS TO JUSTIFY REVIEW BY THIS COURT

Petitioner cites the case of *Southern Farm Bureau Life Ins. Co. v. Moore*, 993 F.2d 98 (5th Cir. 1993), in support of the proposition that federal courts should look to state law for guidance in ERISA benefits cases. (*See* pp. 15-17 of Petitioner's Brief.) *Moore* does not, however, stand for that proposition and its holding, in fact, parallels and supports the holding of the Ninth Circuit in the case at bar.

In *Moore*, the Fifth Circuit held that an ERISA group life policy did not cover the death of the participant's husband in an automobile collision and fire which occurred after he had lost consciousness due to a brain tumor. The policy language, the court held, clearly and unambiguously excluded recovery in cases where the death was caused or significantly contributed to by disease or bodily infirmity. 993 F.2d at 103-104.

In discussing whether the fact of Mr. Moore's death fit within the policy's exclusion, the Fifth Circuit observed that, if "ERISA does not provide guidance on the issue . . ., this court *may* look to general principles of common law or state law that may be persuasive." 993 F.2d at 102 (emphasis added). Thus, *Moore* does not *require* a court to follow state law in ERISA benefits cases. *See, e.g., McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990) (district court decision applying state law to designation of beneficiary question under ERISA plan was incorrect; court must look to either statutory language of ERISA or to federal common law, or if no answer is found there, "may draw guidance from analogous state law").

In reversing the district court, the Fifth Circuit in *Moore* concluded:

> The purpose and clear meaning of the exclusion clause was to bar recovery in cases where the death of the insured was caused or significantly contributed to by an excluded risk such as a "disease" or "infirmity of the body," even if an accidental injury was the proximate or precipitating cause of death. Southern Farm Life conducted a reasonable investigation, and based on information available to it—including Mr. Moore's original death certificate, autopsy report, and medical records—concluded that Mr. Moore's death was caused or contributed to by a brain tumor. As the plan administrator, it then made a reasonable decision to deny benefits. Considering the evidence available to the administrator and our interpretation of the policy, we hold that the administrator's factual determination that Mr. Moore's death was caused or contributed to by the brain tumor was not an abuse of discretion and that its interpretation of the policy was correct. This case should have never been submitted to a jury.

993 F.2d at 104.

Similarly, in the case at bar the Ninth Circuit concluded that, based on clear and unambiguous language of the Policy's suicide exclusion and the undisputed facts of Mr. Tortuya's suicide, Metlife's decision to deny benefits was reasonable and not an abuse of discretion. Therefore, *Moore* does not provide a Rule 10 basis for review of this case by this Court.

CONCLUSION

Because the Ninth Circuit correctly applied the law of ERISA in this case, and because the issues raised by Petitioner are neither special nor important and therefore do not support a grant of discretionary review on writ of certiorari, the Petition should be denied.

Respectfully submitted,

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Dated: New York, New York
November 2, 1994

APPENDIX

APPENDIX

List of Parent Companies and Non-Wholly Owned Subsidiaries of Metropolitan Life Insurance Company Pursuant To Rule 29.1

ALBANY GENERAL INSURANCE COMPANY LIMITED
AMI PARTNERS INC.
ANTHONY'S ACQUISITION CORP.
ANTHONY'S MANUFACTURING CO., INC.
AVONDALE INCORPORATED
AVONDALE MILLS, INC.
BANCO DE COMERCIO E INDUSTRIA
BLODGETT HOLDINGS, INC.
BRAELAN CORP.
BRIGGS PLUMBING PRODUCTS, INC.
CHART HOUSE ENTERPRISES, INC.
CICERO/CERMAK CORPORATION
CLOVER LEAF, INC.
CP&S COMMUNICATIONS, INC.
CRYSTAL OIL COMPANY
DAN RIVER INC.
ECLIPSE CLAIM SERVICES INC.
FB BRIGGS, INC.
FEDERAL STREET FINANCIAL ADVISERS, INC.
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS
GRANT TENSOR GEOPHYSICAL CORP.
GS BLODGETT CORPORATION
GS BLODGETT INC.
GS BLODGETT INTERNATIONAL LTD.
HERONFIELD APARTMENTS LIMITED PARTNERSHIP
IGLOO HOLDINGS, INC.
IGLOO PRODUCTS CORPORATION
INMOBILIARIA HOLSANT, S.A.
INTERBROKER, CORREDURIA DE REASEGUROS, S.A.

INTERSTATE BAKERIES CORPORATION
INTERSTATE BRANDS CORPORATION
KOLON-MET LIFE INSURANCE COMPANY
LINCOLN GROUP HOLDING CORP.
LUTHER'S BAR-B-Q, INC.
MAGIKITCH'N, INC.
MANAGEMENT AND RISK INSTITUTE, INC.
MECCO HOLDING, INC.
MEDICAL IMAGING CENTER OF AMERICA, INC.
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC.
METLIFE AGRICULTURAL CREDIT CORP.
METLIFE FUNDING II, INC.
METLIFE INDEPENDENT FINANCIAL SERVICES LIMITED
METPARK FUNDING, INC.
METRIC INCOME TRUST SERIES, INC.
METRIC INSTITUTIONAL APARTMENT FUND, L.P.
METRIC INSTITUTIONAL APARTMENT FUND II, L.P.
METRIC PARTNERS GROWTH SUITE INVESTORS, L.P.
METRIC REAL ESTATE, L.P.
METROPOLITAN HOME LOANS LIMITED
METROPOLITAN LIFE FOUNDATION
METROPOLITAN LIFE INSURANCE SERVICES LIMITED
METROPOLITAN LLOYDS INSURANCE COMPANY OF TEXAS
METROPOLITIAN PLAN MANAGERS LIMITED
METROPOLITAN SERIES FUND, INC.
METROPOLITAN STRUCTURES, INC.
METROPOLITAN STRUCTURES WEST, INC.
MEZZANINE INVESTMENT LIMITED PARTNERSHIP-2
MEZZANINE INVESTMENT LIMITED PARTNERSHIP-6

MEZZANINE INVESTMENT LIMITED PARTNERSHIP-10
MIAF INC. II
MR, INC.
NATIONAL ELECTRONIC INFORMATION CORPORATION
PARK COMMUNICATIONS, INC.
PETERSBURG LONG DISTANCE, INC.
PITCO FRIALATOR, INC.
QUADREAL CORP.
RALPH C. SUTRO, INC.
RB&W CORPORATION
SANTANDER MET, S.A.
SEGUROS GENESIS, S.A. (MEXICO)
SEGUROS GENESIS, S.A. (SPAIN)
SOUTHERN HEALTH PLAN MANAGEMENT, INC.
SSRM SERVICES, INC.
TESORO PETROLEUM CORPORATION
THE GREATER NORTHEAST REAL ESTATE, INC.
TRC ACQUISITION d/b/a THE REGINA COMPANY